

REMARKS

Claims 1, 2, 4, 6, 8-12, 14, 16, 18-23, 25, 27 and 29-33 are currently pending, and no amendment is made by this paper (the Listing of the Claims is provided for Examiner convenience only). At least for the reasons discussed herein, Applicant respectfully submits that all claims are in condition for allowance.

I. Rejection of Independent Claims 1, 11, 21, and 22

The Examiner rejects independent Claims 1, 11, 21, and 22 in the Office Action under 35 U.S.C. § 103(a) over U.S. Patent No. 7,000,187 (“Messinger”) in view of U.S. Patent No. 6,128,622 (“Bach”) and in further view of U.S. Patent No. 7,340,679 (“Botscheck”). Applicant respectfully submits that Botscheck is antedated at least with respect to Claims 1, 11, 21, and 22, and Applicant respectfully requests allowance of same.¹

More specifically, Botscheck cites a provisional application filed April 24, 2002, which Applicant contends is the apparent effective date of Botscheck for the purpose of *ex parte* examination of the present application no. 10/717,838. Applicant respectfully submits that the subject-matter of at least Claims 1, 11, 21, and 22 was conceived, reduced to practice and operated for its intended purpose prior to April 24, 2002.

In view of the present application's claim of priority to Provisional Application No. 60/428,578, filed November 22, 2002, Botscheck qualifies as prior art under 35 U.S.C. § 102(e) only, and Applicant thus submits herewith a *Declaration under 37 C.F.R. § 1.131* for the purpose of antedating or “swearing behind” Botscheck. In view of the attached Declaration and Exhibits, Applicant respectfully submits that Botscheck should be removed as a prior art reference. Accordingly, Applicant respectfully requests withdrawal of the outstanding § 103(a) rejection to independent Claims 1, 11, 21, and 22 and respectfully requests allowance of same.

II. Rejection of Dependent Claims 2, 4, 6, 8-10, 12, 14, 16, 18-20, 23, 25, 27 and 29-33

Regarding the dependent claims, Applicant believes that independent Claims 1, 11, and 22 are patentable at least for the reasons discussed above, and Applicant notes that Claims 2, 4, 6, 8-10, 12, 14, 16, 18-20, 23, 25, 27 and 29-33 are each dependent from their respective one of

independent Claims 1, 11, and 22. Thus, Applicant respectfully submits that all of dependent Claims 2, 4, 6, 8-10, 12, 14, 16, 18-20, 23, 25, 27 and 29-33 are patentable at least by virtue of their dependency upon a patentable independent claim. For at least this reason, Applicant respectfully requests withdrawal of the § 103(a) rejection to dependent Claims 2, 4, 6, 8-10, 12, 14, 16, 18-20, 23, 25, 27 and 29-33 and respectfully requests allowance thereof.

¹ See, e.g., M.P.E.P. §715.02 at 700-278 (“Applicant may overcome a [Section] 103 rejection based on a combination of references by showing completeness of the invention by applicant prior to the effective date of any of the references[.]”).

Conclusion

In view of the above Remarks and the attached Declaration, Applicant respectfully submits that all pending claims are in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. If, however, the Examiner considers that obstacles to allowance of these claims persist, Applicant invites a telephone call to Applicant's undersigned representative.

Please charge our Deposit Account No. 50-4876 in the amount of \$1110.00 covering the fee set forth in CFR 1.17(a)(3). The Examiner is authorized to charge any fees, including extra claim fees and extension of time fees, for example, charge any deficiency, and/or credit any overpayment to Deposit Account No. 50-4876 under Order No. 118156-00602.

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Respectfully submitted,

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